



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Ms. Maleshia Brown Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-8056

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 190913.

The City of Fort Worth (the "City") received a request for a copy of information relating to the expenses of a named individual for a specified time period. You state that the City will release "copies of the expense reports, receipts and any memoranda related to the expenses to the requestor." However, you assert portions of the submitted information are excepted from disclosure under section 551.116 of the Government Code.¹ We reviewed the information you submitted and considered the exception you claim.

You seek to withhold that the highlighted portions of the submitted information and the document titled "Receipts Missing" under section 552.116 of the Government Code. As you note, in Senate Bill 1581, which became effective on June 18, 2003, the

¹ Alternatively, the City claims that the submitted information is excepted from disclosure under section 552.022 of the Government Code. However, we note that section 552.022 does not constitute an exception to disclosure under the Act. Rather, section 552.022 specifies eighteen categories of information that must be released to the public unless the information is expressly confidential under other law or, in the case of a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, excepted from disclosure under section 552.108. See Gov't Code § 552.022(a). Accordingly, we do not address whether the submitted information is excepted from disclosure under section 552.022 of the Government Code.

Seventy-eighth Legislature amended section 552.116 of the Government Code. As amended, section 552.116 provides, in pertinent part, as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, or a municipality is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Act of May 28, 2003, 78th Leg., R.S., ch. 379, § 1, 2003 Tex. Sess. Law Serv. 1604 (to be codified as amendment to Gov't Code § 552.116). A governmental body that invokes section 552.116 must demonstrate that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. You inform us, and provide supporting documentation showing, that the City is required by ordinance to have an independent audit of all administrative departments performed annually. Additionally, we note that section 103.001 of the Local Government Code requires a municipality, such as the City, to have its records and accounts audited annually. Local Gov't Code § 103.001. You explain that the information at issue is maintained for preparation of the City's annual audit. Further, you state that the "City-wide audit is not complete and there is no final draft of the audit available." Based on our review of your representations and the submitted information, we find you have sufficiently demonstrated that the information at issue was prepared or maintained by the City's auditor in conducting an audit authorized or required by a statute of this state or the United States. See Gov't Code §§ 552.116(a), (b)(1), (b)(2). Accordingly, the City may withhold the information you have highlighted and the document titled "Receipts Missing" under section 552.116 of the Government Code. The City must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 190913

Enc: Submitted documents

c: Ms. Anna Tinsley
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(w/o enclosures)